

BOARD OF ZONING APPEALS

MARCH 5, 1998

A. ROLL CALL

PRESENT:

Mr. Nice
Mr. Giedd
Mr. Fischer

ABSENT:

Mr. Feigley
Ms. Wallace

OTHERS PRESENT:

Allen J. Murphy, Jr., Zoning Administrator
Scott Denny, Code Compliance Officer
John Patton, Code Compliance Officer

B. MINUTES

The minutes of the February 5, 1998 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-1-98. M. Lloyd & Sarah Weaver

John Patton presented the staff report stating that Mr. David W. Otey, Jr., owners agent, has requested a 25.29 foot variance from Sec. 24-215, Setback requirements and a one-inch variance to Sec. 24-217a, Yard regulations for their residence at 9305 Barnes Road. The property is zoned A-1, General Agricultural, and is further identified as parcel (3-2) on James City County Real Estate Tax Map No. (4-3).

Barnes Road is a thirty-foot right-of-way in front of the Weaver's residence. Structures are required to be located a minimum of seventy-five feet from the centerline of the street for property less than three acres in size. The required building setback is sixty-feet from the street right-of-way. The Weaver's single family dwelling is 34.71 feet from the front property line adjacent to Barnes Road. The required side yard setback is fifteen feet. The Weaver's residence encroaches .06 feet into the left side yard setback.

The Weavers are requesting a variance in order to gain a clear title to the property and improvements. The residence was built in 1977 and the property was only one acre in size at this time. The dwelling was built within the required setbacks. In 1989, the zoning ordinance changed the setback requirement from 60 feet to 75 feet from the centerline for streets less than 50 feet wide. The location of the house became nonconforming at that date. It has legal status as a nonconforming structure and no variance is necessary for the front setback. The side yard encroachment has existed for over twenty years without complaint.

Staff cannot demonstrate any legal hardship in this case and therefore cannot support this application.

Mr. Nice opened the public hearing.

Mr. David W. Otey, Jr., owners agent, stated that a 1979 survey of the property showed that the dwelling was located thirty-five feet from the front property line and sixty-feet from the centerline of Barnes Road. The applicants have no intention of making any additions to the property at this time and are only seeking a clear title to the property.

Mr. Nice closed the public hearing.

Mr. Giedd stated that he had no problem with supporting this request for a variance as the encroachment of less than an inch has existed for over twenty years.

Mr. Nice stated that the applicant's intent was to conform to the ordinance from the beginning and the right-of-way was and is confusing on Barnes Road. He would support the granting of a variance in this case.

Mr. Fischer made a motion to grant a variance of one inch to the side yard setback requirement and a twenty-six foot variance to the front setback requirement to give the applicant's clear title to the property and all improvements.

Mr. Giedd seconded the motion.

The variance was granted unanimously 3-0.

ZA-2-98. Clint and Veronica Morton

John Patton presented the staff report stating that Mr. & Mrs. Clint Morton, property owners, have requested a sixteen-foot variance in order to add a deck to their house under construction at 151 Clark Lane. The property is located in the R-2, General Residential, zoning district and is further identified as parcel (1-53A) on James City County Real Estate Tax Map No. (32-2).

The dwelling is located on the rear setback line, thirty-five feet from the rear property line. Although a building permit was issued in November 1997 for a single family dwelling with attached garage at this location which indicated that a 192 square foot deck was included, no deck was specifically shown on the site plan.

The Morton's noted in their application that the amount of buildable space on their property is limited due to the topographical features of their lot. The rear of the property faces a cluster development with zero rear yard setbacks and a thirty-foot wooded buffer.

Staff found no legal hardship that would justify for granting a variance in this case and cannot support this application.

Mr. Nice asked if the foundation survey was done before or after the slab had been poured.

Mr. Patton replied that the survey was done after the foundation was poured.

Mr. Nice opened the public hearing.

Phil Davidson, contractor, spoke on behalf of the applicant. He noted that the road in front of the property curves away from the front of the home and he had lobbied unsuccessfully for the County and VDOT to make the drainage ditch twelve feet instead of sixteen feet.

Mr. Giedd asked if the patio could be built up a foot higher than grade.

Mr. Davidson replied that the applicants would make that decision and it could be done.

Mr. Nice indicated that the majority of the lots in the Raintree Villas subdivision present unique topographical features that present a challenge for developers.

Mr. Nice closed the public hearing.

Mr. Giedd stated that he would support this application provided a condition is added that would prevent any further encroachment into the setback.

Mr. Nice stated that the lots surrounding this property are all narrow and small and the intent of affordable housing is to make the homes livable. A deck is a reasonable desire for any homeowner. Adjacent property owners have similar situations and this proposed deck is no different than any other in the vicinity that has been granted variances previously. It is compatible with surrounding properties and he would favor granting this request.

Mr. Fischer noted that he was in agreement with Mr. Nice and Mr. Giedd.

Mr. Giedd made a motion to grant a variance of twelve feet to the rear setback for the construction of a deck with the condition that no future encroachment is allowed.

Mr. Fischer seconded the motion.

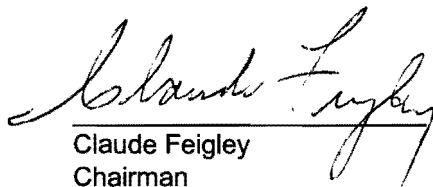
The variance was granted by a unanimous vote 3-0.

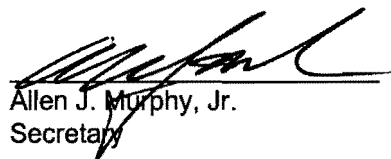
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Giedd stated that he anticipated resigning from the Board due to an increased workload at his office.

F. ADJOURNMENT

The meeting was adjourned at 8:00 p.m.


Claude Feigley
Chairman


Allen J. Murphy, Jr.
Secretary